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INTERSTATE TRADE BARRIERS //

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When the Founding Fathers met in Philadelphia in 1787 to draft a new constitution for the United States, they were inspired to establish national unity and order by the evils of dissension and barriers between the states that had developed in the period after the termination of the Revolutionary War. They succeeded admirably in all respects save one: they did not solve the dilemma of a nation that was half-slave and half free. Even before Appomatox wrote finis to that desperate conflict, the United States flourished in a free economy. Internally, we had one of the greatest free markets of the world. With men permitted to migrate without hindrance to areas of greater opportunity, and with no tariffs to obstruct the movement of trade, we achieved a high degree of specialization and productivity. After the Civil War, despite some lingering unpleasantness in the South, we blossomed forth into a great industrial power. Each section was allowed to exploit its own special resources and to ship its goods to other sections for further manufacture or consumption.

Then, as the frontier diminished, as a new means of transportation --the automobile truck—threatened the supremacy of the railroads, and as technological improvement wrought profound changes in the processes of production, the conflicts between labor and employers on the one hand and agriculture and industry on the other became more bitter and particularism revived.

It would be arbitrary, but reasonable, I believe, to assert that the recrudescence of states' rights originated in the liquor controversy. This is still one of the potent factors in interstate barriers; many others have been added. The most widely discussed are the barriers to trade, but since other obstacles to free movement of men from state to state are part and parcel of the new particularism, I shall comment on them too, at this time.

The leading forms of trade barriers are those applied under the taxing, licensing and police powers. Under the former, special and discriminatory taxes and license fees and obstructive regulations are laid upon "foreign" corporations, insurance companies, certain types of merchandising corporations and foreign trucks and buses. Some of these taxes and fees are levied by the states, others by municipalities within the states. One of the newest nuisances is the use tax, applied without "offsets" for sales taxes already paid, to goods purchased in other states by residents of states having retail sales taxes.

The police power is used extensively in excluding from certain states the agricultural and dairy products of their neighbors. Regulations of this type exclude fluid milk and cream by refusal to furnish health inspectors and by arbitrary changes in sanitary requirements, some of which are quite ridiculous. Quarantines are laid against plant and animal products from competing areas on economic rather than pathological biological grounds. The movement of labor is restricted. The exportation of natural resources and some types of goods is forbidden; and grades, standards and labels are established without regard to Federal specifications or those of other states.

This new trend has evoked considerable opposition and engendered acrimonious disputes between the states. The Council of State Governments, the United States Department of Agriculture, the Works Progress Administration and other agencies have made exhaustive studies of the different types of barriers and, in most instances, have recommended their abolition. Writers in popular magazines have described the process in dramatic language, often overemphasizing the humorous and ridiculous features of the restrictions, and generally agreeing that the laws were bad though not always making it clear why they thought so.

Time does not permit any exhaustive analysis of the restrictive acts; but I shall try, in as few words as possible, to indicate their general nature. In the first place, there are a number of laws which direct the state or its subdivisions to give preference to domestic vendors. To some extent, these laws and practices are dictated by political party considerations. But most of the arguments used rest on a broader foundation. Thus, public purchase and employment preference laws are supported by the arguments that:

a. Tax payer producers are protected against non-tax-paying producers.

b. The general prosperity is protected by keeping business at home.

c. General security is protected by domestic diversification of industry.

d. They provide special protection to home producers against outside products with lower costs.

e. Purchase preference laws protect local purveyors and local workers, (the latter are safe-guarded against pauperism.— People vs. Crane; 214 New York 154) and burdensome local relief rolls.

f. They reduce the intensity of competition. Higher governmental expenditures result but there are higher taxes as well.

Public purchase preference laws are favored by the less highly industrialized states. Laws of this type began in 1889 with the New York law excluding aliens and non-residents from public employment. California, in 1897, was first with a law favoring state-produced building materials and institutional supplies. New Hampshire in 1901 followed with a law favoring resident printing shops for public printing. Certain states have enacted laws preferring residents in public employment because they suit both business men and workers. Before 1930, eight states had such laws; in 1931 eleven more states were added to the list; in 1932 two states; in 1933 eight states; in 1935 three states. At the present time, forty-seven states provide some kind of preference, Alabama being the only one which does not.

All but six states give residents of the state some kind of preference in employment or in the sale of materials to state departments or institutions, California, for example, prohibits the purchase for the state of products of Mongolian labor; Indiana requires that in the construction of state highways and bridges all unskilled laborers employed thereon must be residents of the county in which such work is being done. In New York, attempts have been made for many years to require that teachers in the public schools be residents of the city. All but seventeen states require that preference be given to state products, and in some cases states stipulate an absolute preference. In other cases, differentiation is shown —that is, it is required that a certain percentage of the products employed be produced in the state. Or states may give price differentials to state products. Indiana, for example, gives preference to state-mined coal and Indiana limestone; Nebraska forbids state institutions to use oleomargarine, requiring the use of Nebraska butter. All but twenty-two states either require that all printing contracts be let out to citizens of the state or give the latter certain preferences. Kansas requires that text books for use in public schools must be printed in the state printing plant.

In general, the preferences in the purchase of supplies and building materials began in California in 1897 and have been adopted since then by many other states without any noticeable periodicities. Oregon, in 1915, initiated the policy of price differentials. The states which are opposed to this practice and have only minor restrictions on purchases with respect to origin are the industrial states: New York, Pennsylvania, Ohio, Michigan and Illinois. The policy of preferring domestic printers is in most states a custom associated in the beginning with political party control of state administration. California and Hawaii originated the discrimination in favor of resident text-book publishers, dealers and writers; and the Middle Western states of Nebraska and Wisconsin originated the prohibition on the use of oleomargarine in state institutions. Evidence has been collected to show that municipalities have discriminated in favor of local agents in taking out fire and tornado insurance policies. These discriminations are not barriers to free interstate trade, but they exemplify the tendency toward economic provincialism. There are also many local practices favorable to domestic producers which are not sanctioned by law but have the support of custom. These practices have in most cases arisen in connection with political machine control over local administration. As a result there has arisen considerable controversy and retaliation by states against other states. Minnesota and Wisconsin in the Middle West and Virginia, Maryland and North Carolina among the Atlantic states have engaged in rather bitter disputes over public construction contracts. Against these two tendencies to protect domestic industries and home labor a number of forces have asserted themselves. The establishment of centralized, scientific purchasing has tended to substitute general scientific standards for special political standards. And the growing authority of the national government, augmented by the increased military establishment and the erection of new defense industries under Federal supervision has already weakened state preferences for domestic labor and domestic goods.

Another kind of discrimination is the favoring of home industry by differential taxation. Despite limitations placed on the states by judicial interpretations of the Constitution, states have exercised a certain amount of discretion in taxation which has been used to obstruct interstate trade. Generally speaking, the Court allows taxes which are not a DIRECT BURDEN on interstate commerce and on articles which have been divested of their interstate character. In this category are liquor, nitro-glycerine, oleomargarine, game killed in violation of state laws, and prison-made goods.

In connection with the right of taxation, states have imposed on foreign corporations certain restrictions on the right to transact business within their borders. The legal rules in this field are quite complicated, but generally speaking, give considerable latitude to state legislatures in the control of non-resident corporations. Among the kinds of protected concerns are insurance companies. As you know, insurance corporations were exempted from Federal regulation by decision of the Supreme Court in Paul vs. Virginia (8 Wallace 168; 19 L. ed. 357 (1868)). Since the majority of the insurance companies were located in three or four states, this decision placed policy-holders in other states at the mercy of the pioneers. But there is no sound economic reason for locating insurance companies in any particular region. Insurance companies were organized in many states and the result was decidedly unsatisfactory. Protective regulations established by the states were necessary in view of the absence of Federal regulation.

State use taxes were first levied in Kentucky in 1934, and there are now 16 states having general use taxes, with rates of one percent to three percent; seven of them include compensatory provisions. Originally these taxes were levied on goods purchased outside the state to avoid payment of a retail sales tax; and they would have been tariff duties—and therefore unconstitutional—if the states had not met this objection by means of "offsets" which limited the amount of the tax to that paid by domestic purchasers of goods. Six states have not adopted "offsets" and their acts are therefore of doubtful constitutionality. But whether they have "offsets" or not, they constitute barriers to free trade among the states.

Automobile, truck and motor vehicle regulations are, like use taxes, designed primarily to find new sources of revenue for states and cities; secondarily to protect local merchants; and, also, to relieve the burdens on local taxpayers. Railroads and their larger customers also favor such legislation. The regulations consist of registration fees; taxes on mileage, gross receipts, and other items; the requirements of a certificate of convenience and necessity, or of a permit and evidence of fees paid; detailed regulation of trips; insurance; bonds; the production of the license; deposits, which are later refunded; and the application of all general regulations.

These regulations are not always apparent on the face of the statute; but fees pyramided against a single truck become exorbitant. One trucker was reported to have paid out $47.50 to the state of Kansas for a two-day journey. These practices are very burdensome on farm truckers living near the state line and on consumers. They also weigh heavily on migrants who must move their household goods and other effects from one state to another. Some mitigation in the severity of the law is to be found in the reciprocity provisions; but even these are uncertain. Indiana is always at swords' points with its neighbors. At any moment the compromise now in force may be denounced. Nine states grant complete reciprocity on all fees, thirty-two grant partial reciprocity, and seven grant none at all. These provisions are very complicated and no thorough study has been made of their operation. Actual practice may be more or less severe than the law allows.

Nine states exempt farmers trucking and selling their own crops from the gross receipts taxes, but they burden them with all the other fees, mileage taxes and similar restrictions. Taxes and fees vary from state to state, and within states, with the size of the truck. Registration fees run from $30 in Illinois to $400 in Alabama and Georgia on a five-ton truck. Itinerant truckers are especially hard hit. In Arizona, each merchant trucker must pay a license fee of $200 per year in each county, and $25 additional for each assistant or helper;
a wholesaler pays $500 in counties over 100,000
$300 in smaller counties,
and posts a bond of $5000 with a surety, who is a citizen of Arizona.

Some critics have made sport of the different provisions in regard to size of truck. Regulations concerning width are fairly uniform, but those on height, weight and number of units are widely varied. Kentucky and Tennessee allow only 18,000 pounds as maximum gross weight, whereas Rhode Island permits 120,000 pounds. The discrepancy here may be accounted for by the narrow roads and many small bridges of the mountainous border states and Rhode Island's small area and comparatively flat terrain. But Connecticut, next door to the Plantation State will not let a trucker drive a vehicle whose net loaded weight exceeds 40,000 pounds. This is an unfair restriction on Rhode Island.

Despite the clamor raised by American truckmen, I believe there is a genuine public sentiment against truck and bus transportation. Railroads are faster, safer and more convenient. Trucks and buses clutter up highways that are meant to be used for private transportation and pleasure. Eventually, freight and passenger motor vehicles may be forced to use special highways (perhaps discarded railroad beds) for long hauls, and to be operated as adjuncts to river and rail transportation for short hauls. Until these provisions are made, some kind of order and uniformity should be introduced into the chaotic methods of control now prevailing.

As an incident to motor vehicle regulation we have ports of entry. For some reason, students of trade barriers have given them separate attention as though they were peculiar hindrances to interstate trade. Obviously they are only administrative devices for accomplishing some of the purposes I have just outlined, and some that I am about to name. At present, fourteen states maintain ports of entry for one purpose or another.

The next class of trade barriers purport to be instruments for the protection of the farmers. The earliest and best known of the agricultural regulations relate to dairy products. They were designed to protect the public against unsanitary conditions of manufacture and adulteration, and the farmers against the unfair competition of oleomargarine. There is no legitimate objection to the proper application of licensing and inspection laws against unsanitary farms and dairies and diseased stock. But some of the states and even cities go to absurd lengths in enforcing such legislation. Thus, Connecticut at one time required out-of-state milk to be colored green. Restrictive acts are in force in Rhode Island, New Jersey, Pennsylvania and in a number of cities. Observers have pointed to the possibility of abuse of the Florida and New York regulations but have found little evidence of it. Since one of the great problems of dairy products distribution is that of establishing price differentials for fluid milk and milk used for the manufacture of cheese, butter and ice cream, legislatures have recently sought to impose some reasonable economic order over the distribution of dairy products. Such legislation may easily be converted into acts of discrimination against out-of-state producers, but this aspect of it has so far been subordinated to the problem of stabilizing the relationships between producers, processors, distributors and consumers.

The restraints on trade in other dairy products including evaporated and condensed milk—which I did not name earlier—are almost as numerous as the milk and cream regulations. In Minnesota and Nevada attempts have been made to exclude "foreign" meat products and bakery goods by the same device used in dairy products—forbidding the sale of goods made in places not inspected and licensed by the state where sold. The courts, however, frowned on these laws and ordinances.

Federal and state taxes and regulatory laws were applied to margarine at the time of its introduction in the 1870's. Before 1929, state regulation which survived the scrutiny of the courts was only moderately restrictive. That passed since that time, and held to be constitutional is highly effective. The earlier laws were designed to prevent the sale of margarine as butter, a common practice of the time;* later laws have been frankly concerned with protection to the dairy industry. Some of the regulations are very drastic. Thus Arkansas and Missouri provide that dishes upon which margarine is served be clearly labeled "oleomargarine."

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* see W. D. Foulke, Fighting the Spoilsmen. G. P. Putnam's Sons, N.Y. 1919.

All the states but Arizona have some kind of oleomargarine law. Two-thirds of the states prohibit the sale of yellow oleomargarine, and their definitions of the color vary considerably. Nine states levy excise taxes on colored oleomargarine. Twenty prohibit the use of oleomargarine in state institutions. Twenty-three lay excise taxes on all margarine. Sixteen have license requirements. Some states give statutory preference to margarine made from domestic products. And there is a bewildering variety of rules governing labels.*

Mature judgments on the margarine laws indicate that regulatory legislation does not benefit the farmer by raising the price of butter or by increasing its consumption. Again we see that there is no material benefit derived from the restrictions and a need for uniform national legislation.

Further efforts to protect the farmers and the consumers are to be found in the state quarantine and inspection laws. These are applied by both the state of origin and the state of destination. In the control over the trade in eggs, standards fixed give preference to the home state. Six states practically exclude "foreign" eggs. The familiar method is to forbid out-of-state shippers to label their eggs "fresh", even though they may be only a few hours old. Other foods are restricted in the same way. For example, there are prohibitions on the marketing of culls; prohibitions on the marketing, export or import of sub-standard products; and restraints inherent in labels showing state of origin. The application of a quarantine on dairy cattle affected with Bang's disease by the New York Commissioner of Agriculture and Markets in 1932 practically destroyed the sale of Wisconsin milch cows in New York.** That this was not a health measure is revealed by the fact that the Western herds were superior, healthier and less costly than New York herds.

It is also evident that quarantines and inspections of horticultural products have had an economic and political motivation. Strenuous efforts have been made by horticultural inspectors and the nurserymen to correct this condition, but there are still many abuses. All the states have nursery stock laws which confer too much discretion on local administrative officers. Twenty-six states require the registration of nursery dealers; fourteen ask also that state-of-origin labels be filed; twenty-six states demand license fees of from $1 to $100 per year. Twenty-eight states ask that out-of-state stock have state-of-origin certificates. Forty-seven states provide for inspection and twenty-three more or less freely enforce quarantines.

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* See Barriers to Internal Trade in Farm Products, a Special Report to the Secretary of Agriculture, Bureau of Agricultural Economics, Department of Agriculture, Washington. March, 1939. pp. 17ff.

** See F. E. Melder, Agricultural Quarantines as State Barriers. (Chicago, March 27, 1939 p. 2).

It is to be expected that liquor legislation will loom large on the horizon of interstate trade restrictions. During the period of prohibition, the tasks of administration were uniform but not simple. After repeal, notwithstanding our own earlier experience and the example of foreign countries, we inaugurated a most variegated system of control that makes analysis of operation difficult and appraisal of motivation well-nigh impossible. Fifteen states have created public monopolies; twenty-five states have created central licensing bodies. That the revenue rather than the social welfare aspect of the problem is dominant may be seen in the plans of control which were established.* A secondary motive is temperance, but the campaign for abstention and moderation has languished during the past decade and now constitutes a minor movement. A third motive is protection to farmers, (i.e. producers of grain and grapes) and to distributors. It is in connection with safeguards to producers and distributors that liquor legislation becomes a restraint on interstate trade. Twenty-six states try to stimulate and promote their domestic liquor industries by fostering and protecting state-grown crops. They impose lower license fees on manufacturers using local products; and, in the monopoly states, give purchase preferences to beverages made from local products or sold by domestic distributors who have very few competitors. Twenty-five states exempt beverages intended for export from taxation—or they reduce taxes on such goods. On the other hand, Georgia and New Jersey penalize exporters and Pennsylvania applies reciprocity. Many states discourage imports of finished products or raw materials by taxing imports; imposing license fees on importers, and establishing residence restrictions.

These laws may have been of value to certain groups of citizens within a given state, but on the whole they have been detrimental. Six states have passed retaliatory laws aimed at discriminatory beer legislation. Michigan gave a substantial preference to domestic grapes in order to curb wine imports, and California threatened to block the public purchase of Michigan automobiles. Unhappily for Michigan farmers, the citizens of the state refused to buy Michigan wines and the only effect of the law was to discourage the consumption of wine. Maine keeps her spirit trade at home by charging a license fee of $100 to distillers using Maine products and $3000 to distillers using out-of-state products.

It is still too early to state what the effect of the manifold liquor regulations have been. Harrison and Laine consider that the varied and discriminatory fees have been "a source of trouble and confusion to liquor administrators and dealers alike."** The cause of abstention has not been served. Perhaps there is more temperate use of intoxicating liquors today even if per capita consumption has increased. More people are drinking less beer, wine and spirits. From a revenue standpoint, states have profited by repeal and by tax-collections on liquors. But tax collections might even be greater if interstate restrictions were removed.

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* L. V. Harrison and E. Laine. After Repeal. Harpers; New York, 1936. p..17.

** Op. Cit., p. 195.

In the broad field of restrictions on exports there is but little consideration for the farmer. However, protection to agriculture is not ignored altogether. The same principles operate here as in the case of national embargo. The state tries to preserve its limited natural resources for the use of residents of the state, to raise revenues and to prevent the export of inferior grades of goods in order to conserve the reputation and market of superior qualities of goods produced in the state. A fourth objective is the stimulation of local manufacture and resident pay-rolls.

The products which have been safeguarded in this way and for these reasons include: natural gas, shrimps and oysters, citrus fruits, colored oleomargarine, loanable capital funds, water in flowing streams and hydro-electricity. However meritorious some of these acts are, particularly in protecting standards, they have increased the friction between the states and have sometimes defeated their own purpose by stimulating out-of-state production and by discouraging consumption.

Enough has now been said for us to realize the enormous extent and the extraordinary variety of barriers to interstate trade. The states are responsible for most of this legislation; but the cities and even the counties have added to the confusion. In Missouri an attempt was made to restrict the sale of farm produce within ten miles of the county line.* Somehow this tendency had to be checked. A beginning has been made; but much remains to be done.

SUMMARY

In summarizing this development of interstate barriers, we are faced with the problem of interpreting a movement not unlike the national protective tariff movement—and you know how hopelessly voluminous the literature on that subject is. However, let us see if we can discover its nature and characteristics.

Fundamentally, interstate barriers are an expression of particularism, the equivalent of nationalism. Citizens of a particular state feel an emotional attachment to that state that overrides all considerations of logic and hard common sense. They believe, properly, that the welfare of themselves and their neighbors is their primary concern. So, they pass laws which are designed to protect the resources of the state from exploitation and profit by "outsiders." Emotionally, and even in the language of the law, citizens of other states are foreigners. Hence, we try to reserve our resources for our fellow state citizens. We also strive to give maximum employment to our fellow-workers, to give maximum profit to our fellow-producers and to give maximum benefit to our neighborhood distributors. We are particularly keen to reserve the right to state employment and the right to sell supplies of the state to our fellow state citizens.

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* Gov. Lloyd C. Stark in Trade Barriers Among the States, Proceedings of the National Conference on Interstate Trade Barriers. Apr. 5, 6, 7; 1939 p. 42.

But, as has been often remarked, Trade is Trade. You can't sell to others unless they are permitted to sell to you. Logic is therefore against these hindrances to imports. Moreover, the United States is a nation: one large, free economic community. Citizens of other states actually are not "foreigners"; they are fellow-nationals. The organization of industry and transportation and communication and wholesale distribution—at present even retail distribution—and credit and advertising and, to a considerable degree, consumption habits....all is national. At the present time, the organization of the government is becoming highly centralized. Associational life, under the impact of modern world forces, is becoming more highly nationalized. Churches split by the disputes over slavery a decade before the Civil War are reuniting on a national plane. Nationalism is here in full force. It can be retarded but not obstructed from attaining its final consumation.

Why, then, the amazing resurgence of state particularism at the very moment of the triumph of nationalism? It is but a temporary manifestation of an era of transition. It is fed by the desperation of political machines whose leaders wish to remain in power; of producers which lack a national policy for the regularization of the production, standardization and marketing of their crops and manufactured wares; and of the men responsible for raising adequate revenues for accomplishing the purposes of governments with new functions and of satisfying the popular demand for a higher standard of living. It is a strange coincidence that we have even had to put up with some of the old tariff duty fallacies. Thus, laws levying prohibitive fees and taxes have been laid on certain products, such as liquor or out-of-state apple trees in order to prevent their importation, and then have been justified as measures for producing revenue. Carefully inspected Florida fruit has been excluded from California under the pretense of shutting out plant diseases and pests, while the gates are open to infected fruit from islands in the Pacific Ocean. Nevertheless, those motives which inspire laws to establish scientific standards and protect the sanitary, economic and social interests of the citizens or of consumers in home and "foreign" markets are sound in conception. What we need is a national plan, scientifically constructed and informed with national purposes on which we are all agreed.

As I earlier remarked, steps have been taken to remedy the evils of interstate barriers. The Council of State Governments, aided by various agencies of the Federal Government, the United States Chamber of Commerce and associations of producers, transport companies and other groups that have suffered from these obstacles to a sane and orderly national economic policy, inaugurated a series of studies and conferences in 1939 that checked the further spread of particularism.

Specifically, as a result of these efforts, attempts to make existing regulations more severe and to erect new barriers were defeated. Laws were passed introducing reciprocity where there had not been any before. Some states repealed port-of-entry, importation, licensing, taxing and load limit laws, and amendments were accepted that reduced fees and taxes and other prohibitions and regulations.* A poll of the candidates for the state legislature in Indiana revealed that eighty-two percent of them believed that all trade barriers should be repealed as soon as possible.** In many other states both candidates and legislators in office have expressed similar opinions. Private citizens and such groups as the League of Women Voters and the Twentieth Century Fund have expressed their disapprobation of trade barriers. Governors, beginning with Allred of Texas in 1938, and including such distinguished state executives as Lloyd C. Stark of Missouri and M. Clifford Townsend of Indiana, have urged the restoration of the indivisible Union, unhampered by restrictions and barriers.

The executive departments of state government have been enabled to effect many modifications in practice and to influence legislative opinion through the agency of legislative councils and state commissions on interstate cooperation. The first commission was established in New Jersey in 1935;*** since that date, forty-one states "have become members of the Council of State Governments by establishing commissions patterned after the model bill drafted by the Council.**** These commissions were instrumental in defeating adverse legislation in New Jersey, New York, California, Connecticut, Oregon, Vermont and Texas. They have also won notable successes in the Middle West, where even more has been done to bring about collaboration among executives and administrators.

It is clear that the majority of provisions in laws for restricting the movement of men, money and materials from state to state are in open conflict with the spirit and intent of the United States Constitution even if they are, by interpretation of the Supreme Court, faithful to the letter. The history of judicial review of legislative and administrative action establishing interstate barriers is a confusing one. In Art. I, Section 8, paragraph 3, the Constitution conferred on Congress the power "to regulate Commerce among the several states." Broadly conceived by Marshall, this power was whittled away by successive interpretations until, as Robert H. Jackson has said in the Child Labor Case, "the majority of the Court found it a puny power indeed."***** Then it was revived, and today

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* "Progress Against State Tariffs," State Government, April, 1939

** The Indiana Woman Voter. Oct. 1940, Vol. XX, No. 2, p. 3.

*** See New Jersey Comm. on Interstate Cooperation. Report No. 5, Mar., 1940.

**** H. R. Gallagher, "Work of the Commissions on Interstate Cooperation," Annals of the American Academy of Political and Social Science, Jan. 1940. pp. 103 ff. In 1940 there were 44 states having such commissions.

*****R. H. Jackson, "The Supreme Court and Interstate Barriers," Annals, Jan. 1940, p. 70.

it is recovering its original majesty. Today the courts balance the local benefits to be secured against the inconvenience to interstate commerce. Many state regulations are upheld because their effect is indirect or because there is no conflicting national legislation. There is always a presumption of validity in favor of state legislation, particularly in cases of regulation of trade in articles of commerce which are socially injurious. Inspection and quarantine laws are regarded as having a valid motive, since the question is generally this: is state control preferable to no control at all? The state's purchasing power and its employment policies do not even come within the scope of the commerce power at all. But as Solicitor-General, and now Attorney-General Jackson said of one formula, "these principles are much more difficult of application than of statement."

If we now take one final look at the present situation, we see that there is a decline in the legislation that is frankly discriminatory against the products of other states. Legislation giving purchase and printing preference to domestic vendors and establishments is also diminishing under the impact of central purchasing institutions and Federal centralization. Laws designed to help agriculture are being rewritten after the pattern of a national plan, notwithstanding nostalgic remonstrances from the mountain and the prairie states.* And the urgent necessity for interstate cooperation, national unity and maximum production under optimum conditions for consumers as well as producers is slowly overwhelming the last vestiges of Balkanization. The brief but powerful recrudescence of particularism which we have experienced during the past decade undoubtedly represented the last struggle of two forces—one economic and one political. The economic force is not so much the competitive features of capitalism as mercantilism, always a characteristic of a period of declining markets. And the political force is "states' rights" and particularism, imbedded in our federal system. It seems to me that both of these principles, each supported by an honorable tradition, must give way and we must yield to the modern demands for a freer trade and a more powerful, efficient nation.

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* See for example, Gov. Nels Smith, "Vanishing States' Rights," Country Gentleman. Nov. 1940, pp. 18 ff.